United Nations S/2005/33

Security Council

Distr.: General
18 January 2005

Original: English

Letter dated 12 January 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 3 May 2002 (S/2002/518). The Counter-Terrorism Committee has received the attached supplementary report from Burundi submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Letter dated 6 January 2005 from the Permanent Representative of Burundi to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit herewith the supplementary report of the Government of the Republic of Burundi submitted pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Marc **Ntetu-uye**
Ambassador
Permanent Representative

Enclosure

[Original: French]

Report of the Government of the Republic of Burundi submitted to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Burundi has not remained indifferent to the war being waged by the international community against terrorism.

Burundi reaffirms its determination to join other States of the world and to cooperate with the international community, particularly with the Counter-Terrorism Committee set up by the United Nations Security Council to prevent and suppress terrorist organizations in any form by fully implementing resolution 1373 (2001) and any other resolution, convention or protocol relating to counter-terrorism.

In spite of the many problems having to do with the political and security situation it has endured for more than 10 years now, Burundi has continued to demonstrate its commitment to making the war on terror its top priority.

Accordingly, certain structures and laws have been put in place to prosecute the war on terror. Others will be set up soon and the process has begun.

In preparing the present report, the presentation modalities recommended in paragraphs 3 and 6 of the 26 October 2001 reporting guidelines have been followed.

Paragraph 1

Subparagraph (a) — What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) and (d)?

As previously indicated in our first report, the Burundi Penal Code (Decree law No. 1/006 of 4 April 1981) prohibits the activities of criminal gangs organized for the purpose of killing, looting or destroying public or private property, socio-economic infrastructure, the environment and cultural property. These are considered to be terrorist acts under articles 417, 419 et seq. of the Penal Code.

Article 417 stipulates that any offence committed for the purpose of killing, destroying or looting shall be punishable by death.

Article 419 stipulates that anyone seeking to disrupt public order by committing any of the offences mentioned in articles 412 and 417, by invading or sharing public or private property or by attacking or resisting law-enforcement agencies acting against the perpetrators of such acts, or who has led an armed gang or performed any command or other function therein shall be sentenced to death.

The same penalty shall apply to anyone who conducts the association, raises or is behind the raising, organizes or is behind the organization of gangs.

Subparagraph (b) — What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

Under the aforementioned draft decree, the activities constituting offences are listed in article 2, paragraph 1, and articles 3, 4 and 5, which define and prescribe the penalties incurred for the organization of terrorist groups;

Article 2, paragraph 3, articles 3, 4 and 5 of the draft decree define and stipulate the penalties for the collection of funds and other financial assets with the intention that they should be used to prepare or carry out terrorist acts.

The provision of funds or financial assets to any person who may, with good reason, be suspected of preparing or carrying out an offence referred to in articles 1 and 2 of the aforementioned draft decree or to any entity owned by the suspect or over which he or she has significant influence, or to any person or entity acting on behalf of or at the direction of the suspect, constitute offences punishable by custodial life sentences.

Similar offences listed in the Penal Code of Burundi are punishable by the death penalty (see articles 417, 419 et seq. of the Penal Code, Book II). This distinction is made necessary by the current international trend towards the abolition of capital punishment.

Subparagraph (c) — What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

In article 4, paragraphs 1 and 2, the draft decree provides, that:

> "When a person is suspected, with good reason, of preparing or carrying out an act referred to in articles 1 and 2, the Public Prosecutor's Office shall take the necessary measures to freeze without delay all property belonging to:
>
> (a) The suspect;
>
> (b) Any entity owned by the suspect or over which he or she has significant influence; or
>
> (c) Any person acting on behalf of or at the direction of the suspect or entity referred to in paragraph (b) above."

Financial institutions must inform the Public Prosecutor's Office about suspicious transactions linked to any act referred to in articles 1 or 2. In addition, they must, at the request of the Public Prosecutor's Office, provide all useful information concerning the suspected offence.

Such information is treated with confidentiality.

In practical terms, the Government has already taken the necessary and appropriate action to raise the degree of vigilance concerning terrorism-related financing, activities and assets.

The competent monitoring authorities have been instructed accordingly.

Subparagraph (d) — What measures exist to prohibit the activities listed in this subparagraph?

- Establishment of a National Commission to Combat Terrorism;
- Checks conducted in the immigration services and financial institutions to establish the existence of individuals, entities, assets or property belonging to terrorist networks;
- Strengthening of security measures at airports and borders;
- Institution of systematic searches of baggage and passengers at airports;
- Designation of the Focal Point for the Security Council Committee.

Paragraph 2

Subparagraph (a) — What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

The Government has prepared a draft decree prohibiting the financing and facilitation of international terrorism (articles 2, 3, 4 and 5 of the draft decree). The draft makes recruitment to terrorist groups and the supply of weapons to terrorists an offence punishable by life imprisonment (articles 4 and 5). In addition, the Penal Code already prohibits, under articles 417, 419 et seq. any participation in armed gangs.

The import, acquisition and bearing of firearms are regulated by the Decree of 21 February 1950 enacting rules governing firearms and ammunition and general enforcement measures.

Subparagraph (b) — What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

- Burundi is a member of the International Criminal Police Organization (INTERPOL);
- The Office of the Superintendent of the Criminal Investigation Department of the Public Prosecutor's Office is cooperating with Interpol in the exchange of information;
- Under its terms of reference, the National Commission to Combat Terrorism is responsible for gathering data and information and bringing them to the attention of the Government, which shares them with the Security Council Counter-Terrorism Committee and with other countries.

Subparagraph (d) — What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

Burundi abides by the Charter of the United Nations and other rules of international law strictly prohibiting the use of the territory of one State as a base for terrorist groups that are destabilizing another country.

Also, agreements on mutual legal assistance and extradition have been concluded between Burundi and its neighbours to ensure that terrorist criminals do not move to a neighbouring country to escape punishment.

Subparagraph (e) — What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

The Burundi Penal Code sets very severe penalties for participation in armed gangs (articles 417, 419 et seq. of the Penal Code).

By their modes of operation and the seriousness of the offences that they commit, armed gangs may be considered as terrorist groups.

The draft decree prohibiting the financing of terrorism and the facilitation of terrorist acts makes their commission punishable by sentencing to life imprisonment.

This penalty difference between articles 417 and 419 of the Penal Code and the draft decree has been rendered necessary by the international trend towards the abolition of capital punishment.

Subparagraph (f) — What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

As a member of Interpol, Burundi shares information with other countries in the Interpol network through the Office of the Superintendent of the Criminal Investigation Department of the Public Prosecutor's Office.

Burundi also cooperates with other States through the following and other mechanisms:

- United Nations organs, in particular the Security Council through its Counter-Terrorism Committee;
- The African Union (AU) Directorate for Conflict Prevention, Management and Resolution in Africa;
- The United Nations Standing Advisory Committee on Security Questions in Central Africa;
- The United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI).
- In addition, mutual judicial assistance and extradition agreements have been concluded with such neighbouring countries as Rwanda, the Democratic Republic of the Congo and the United Republic of Tanzania and draft conventions on judicial cooperation and extradition between Burundi and the following countries: Russian Federation; Uganda; Zambia and with Namibia have been drawn up.

Subparagraph (g) — How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery?

Within the Ministry of the Interior and Public Security, there is established under Decree-Law No. 100/087 of 13 January 1997, a general directorate for Air, Border and Aliens Police, which is responsible for:

- Monitoring and regulating cross-border movements of nationals, aliens and goods;
- Gathering information on the behaviour of suspected foreigners and on the trafficking in narcotics and other dangerous goods;

More specifically, Ministerial Order 530/327 of 1 June 1999 stipulates in article 17 that the principal role of border posts includes:

- Monitoring cross-border movements;
- Information gathering;
- Combating fraud and the trafficking in firearms, narcotics or other dangerous or banned substances;
- Monitoring and protecting infrastructure;

- Monitoring and protecting ships and aircraft (this mandate applies to parked aircraft or ships at berth).

There are laws and regulations governing the monitoring of cross-border movements, the procedures for the issuance of identity papers and travel documents and measures to prevent their forgery. They include:

- Decree-Law No. 1/007 of 20 March 1989 regulating the access of aliens to the territory of Burundi, their stay and establishment therein and their removal;
- Decree No. 100/026 of 30 January 1996 specifying measures for the enforcement of the Act of 1 August 1962 on the issuance of passports and equivalent documents;
- Ministerial Order No. 530/626 of 23 August 2000 specifying measures for the implementation of Decree No. 100/026 of 30 January 1996 on the issuance of passports and equivalent documents;
- Ministerial Order No. 530/038/96 of 1 February 1996 establishing the tariffs for passports and equivalent documents, travel documents, visas and identity cards for aliens;
- Ministerial Order No. 530/166 of 10 July 1989 establishing measures for the enforcement of Decree-Law No. 1/007 of 20 March 1989 regulating the access of aliens to the territory of Burundi, their stay and establishment therein and their removal.

Moreover, the Penal Code in article 257 et seq. provides severe penalties for false entries in certain administrative documents.

Paragraph 3

Subparagraph (a) — What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

Through Interpol, Burundi is already cooperating in the exchange of operational information.

The establishment of a National Commission to Combat International Terrorism can only strengthen this form of information-sharing.

Subparagraphs (b) and (c) — What steps have been taken to exchange information and to cooperate in the areas indicated in these subparagraphs?

Burundi has already signed and ratified the following conventions and protocols concerning terrorism and transnational organized crime:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by

the General Assembly of the United Nations in New York on 14 December 1973;

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, concluded at Montreal on 24 February 1988;
- Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism adopted in Algiers on 14 July 1999 and ratified on 4 November 2003.

Burundi has already signed the following agreements which are awaiting ratification:

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 12 January 1998;
- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999;
- The additional protocol to the United Nations Convention against Transnational Organized Crime, aimed at preventing, repressing and punishing human trafficking, in particular of women and children, adopted in New York on 15 November 2000;
- The United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000; and
- The additional protocol to the United Nations Convention against Transnational Organized Crime and against the trafficking of migrants by land, sea and air, adopted in New York on 15 November 2000.

The implementation of these agreements should enable Burundi to cooperate internationally in terrorism prevention and control.

In addition, it should be recalled that Burundi has a number of judicial assistance agreements with neighbouring countries and plans to sign similar agreements with the Russian Federation, Uganda, Zambia and others.

Subparagraph (d) — What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Burundi has already signed the International Convention for the Suppression of the Financing of Terrorism.

The ratification of other conventions for combating this scourge is proceeding on schedule.

On 4 July 2003, Burundi ratified the African Union (AU) Convention on Terrorism Prevention and Control.

That demonstrates the commitment of the Government and its determination to stand by the international community in its unremitting struggle against terrorism and related crimes.

Subparagraph (e) — Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

The draft decree on the reform of the penal code aims essentially at the implementation of the United Nations Convention against Transnational Organized Crime and of international counter-terrorism instruments.

The articles of the current Penal Code of Burundi are amended to reflect the provisions of the various conventions concerning transnational organized crime and terrorism.

Subparagraph (f) — What legislation, procedures and mechanisms are in place for ensuring that asylum-seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

The various conventions it has signed enable the Government of Burundi to access information regarding the names of terrorists, terrorist groups and terrorist organizations.

The immigration services are responsible for:

- Monitoring and regulating cross-border movements of nationals, aliens and goods; and
- Gathering information on the behaviour of suspected aliens and on the trafficking in narcotics and other dangerous goods, need to work with other agencies in updating their lists of terrorists and wanted criminals.

In cooperation with the Office of the United Nations High Commissioner for Refugees, the Government, through its immigration services, should make sure that asylum-seekers are not fleeing prosecution for their organization of or participation in terrorist activities.

It is up to States to remain vigilant.

3.3. States may include in their reports additional relevant information, including information on the issues covered by paragraph 4 of resolution 1373 (2001). They may also include general observations on the implementation of the resolution and outline any problems encountered.

The Government of Burundi has bodies responsible for enforcing international laws, regulations and other instruments that contribute to the implementation of resolution 1373 (2001). They include the regular police force, the Air, Immigration and Alien Police, Customs, the finance department and other services.

A draft decree establishing a national commission to combat international terrorism has been prepared.

The draft indicates the composition of the commission and spells out the following mandate:

- Monitor and analyse all information and intelligence on international terrorist acts;
- Investigate all cases of terrorism financing, recruitment of terrorist groups and supply of weapons to terrorists;
- Communicate to the Ministry of the Interior information concerning terrorist acts;
- Formulate proposals for bringing national laws into line with international counter-terrorism norms and mechanisms;
- Ensure the implementation of United Nations General Assembly and Security Council resolutions on combating international terrorism;

- Report annually on measures taken by the Government to combat terrorism;
- Set up a database on terrorists, terrorist acts, groups and networks.

The establishment of the National Commission to Combat International Terrorism should guide all activities relating to resolution 1373 (2001).

Complaints

The Parti pour la libération du peuple hutu-Forces nationales de libération (PALIPEHUTU-FNL) of Agathon Rwasa still refuses to negotiate and has pursued violence in spite of appeals by the Government and the international community.

The violence perpetrated by this movement can be considered as terrorist acts and the various counter-terrorism conventions, in particular resolution 1373, paragraph 6, invoked against PALIPEHUTU-FNL.

The movement has already become guilty of terrorist acts by violating the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971, when **it machine-gunned a SABENA (Belgian airlines) aircraft making its final approach to land at the Bujumbura international airport**, and the. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted on 14 December 1973, when **it assassinated Monsignor Courtney, the Apostolic Nuncio**.

A decision of the Twenty-second Summit of the Great Lakes Regional Peace Initiative on Burundi held in Dar es Salaam on 18 August 2004 declared PALIPEHUTU-FNL a terrorist organization.

The Government of Burundi accordingly requests the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism to take note of this decision and to universalize it by placing PALIPEHUTU/FNL on the list of terrorist organizations and informing all Member States so that they apply against the movement the provisions of resolution 1373 (2001).

Assistance

Burundi obviously needs technical and material assistance and would like to request the following from the Counter-Terrorism Committee:

- The training of its experts on the National Counter-Terrorism Commission in order to boost their capacity for combating international terrorism;
- The procurement of resources for setting up a system for monitoring money sources and movements in its banking institutions; and
- Facilitation in the area of communication with specific reference to the updating of lists and intelligence on perpetrators of terrorist acts and their networks.

Done at Bujumbura this 12th day of November 2004